ADDENDUM TO FINAL STATEMENT OF REASONS

Department of Conservation

SUBJECT MATTER OF REGULATIONS: SOLAR-USE EASEMENTS

Updated Information

The Final Statement of Reasons is included in the file supporting the adoption of all regulations to be adopted as Title 14, Chapter 6, Article 2, Sections 3100 through 3117. The information contained therein is updated as follows:

> This Addendum to Final Statement of Reasons explains the necessity for addition of subdivision (7) which adds a definition of the term "solar-use easement amendment" to section 3101.
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> This Addendum to Final Statement of Reasons explains the necessity of adding the term "farmland security zone" to section 3102 subdivisions (a) and (b).
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> This Addendum to Final Statement of Reasons also adds language explaining why these regulations include language that is duplicative of state statutes.

Specific Changes

Subsequent to the Notice of Proposed Rulemaking and the Initial Statement of Reasons the Department added a definition of the term "solar-use easement amendment" to Section 3101 as a new subdivision (7). This definition is necessary because the term "amendment" was previously included within the text of section 3108, subdivisions (c) and (d), but not defined. Previous section 3108(c) and (d) required the landowner to submit an amendment to the management plan, including the site restoration component of the management plan. However, although the meaning of, and extent and limitations upon an amendment were suggested by the context of those previously proposed regulations, and no comments were submitted suggesting that the public and affected parties did not understand what would constitute an amendment, the Department anticipates that questions might arise regarding the extent of changes to an easement or management plan may be made by an amendment.

The definition added by section 3101(g) explains that an amendment is a change in the solar-use easement that only regards a use allowed by a previously approved solar-use easement, or a change regarding a previously approved management or restoration plan. The addition of this definition in section 3101, subdivision (g) will therefore add clarity to the regulations.

The term "farmland security zone" was added to subdivisions (a) and (b) of section 3102 to clarify that a farmland security zone contract is a type of Williamson Act contract that may be rescinded and the area covered by the farmland security zone contract entered into a solar-use easement. As previously proposed Section 3102 had only referred to Williamson Act contracts. Although this reference is adequate to cover farmland security zone contracts, a farmland security zone contract is a different type

of Williamson Act contract and is usually the agricultural industry typically uses different terms to refer to the different types of contracts.

Pursuant to Government Code section 51200, the Williamson Act is a shortened name for, and means the same as, the California Land Conservation Act of 1965. Either name refers to the statutes codified within Chapter 7 of Part 1, Division 1, Title 5 of the Government Code and which begin with section 51200 and run through section 51297.4. Pursuant to Chapter 7, owners of land devoted to agricultural use may enter into contracts that run for a minimum of 10 years and are annually self-renewing; the contracts require the landowners to continue to devote the land to agricultural use for the term of the contract. In return for entry into a Williamson Act contract, the real property tax on the land covered by the contract can be lower than land not covered by such a contract. Generally, the industry refers to contracts entered pursuant to Articles 1 through 6 of Chapter 7 as Williamson Act contracts. Farmland security zone contracts are allowed pursuant to Article 7 of Chapter 7 and are limited to certain types of higher quality farmland and run for a minimum of 20 years. Areas in which these contracts may be entered are referred to as farmland security zones. Consequently, although contracts entered under Article 7 are legally Williamson Act contracts since they are provided by and entered pursuant to Chapter 7, it is common for those in the industry to refer to Chapter 7 contracts as farmland security zone contracts. For this reason, the addition of reference to farmland security zone contracts is not substantive and merely a clarification of the previously noticed regulations.

Moreover, the addition of reference to farmland security zone contracts does not violate, expand or limit the enabling statutes codified by SB 618 because those statutes specifically reference farmland security zone contracts and makes them eligible for solar-use easements. The specific reference in SB 618 is within Government Code section 51255.1, which was added by SB 618. Section 51255.1 is located within Chapter 7 and begins with the words "[n]otwithstanding any other provision of this chapter…." which therefore is a reference to all of Chapter 7. Thereafter that statute allows the parties to a "contract," without modifying or limiting the type of contract entered pursuant to Chapter 7 and therefore including contracts entered pursuant to Article 7 or farmland security zone contracts to rescind the contract and re-enter the land into a solar-use easement. Section 51255.1(c)(2) references farmland security zones by name where it establishes the fee that a landowner must pay for rescission of the contract and entry of the land into a solar-use easement.

For all of the above reasons, addition of the term "farmland security zone" to section 3102(a) and (b) is not a substantive change to the regulations, but is necessary to add clarity to the enabling statutes and the regulations adopted pursuant to this rulemaking.

The final addition to the rulemaking record is the addition of language in the Final Statement of Reasons declaring that the regulations will duplicate or overlap state statutes which are cited as in the regulations as "authority" and "reference." The duplication or overlap is necessary to satisfy the "clarity" standard of Government Code Section 11349.1(a)(3).

Nonsubstantive Revisions Made to the Text During Review by the Office of Administrative Law

After submission of these proposed regulations for review by the Office of Administrative Law, the Department made a number of non-substantive changes to the proposed regulations as suggested by that Office. Those changes include:

The subdivisions within sections 3100 through 3108, 3110, 3111, 3115 and 3116 were renumbered to add clarity and provide specific citations to those subdivisions.

Changes were made to the punctuation and grammar throughout the regulations to correct mistakes in the previously proposed language. These changes will not affect the meaning, interpretation or implementation of the regulations.

Changes were made to various cross-references located within the previously proposed regulations. These changes will reflect the above-referenced changes in the numbering of the regulations, and mis-identification of statutes and regulations that either provide authority for the regulations, or will be implemented by the regulations, or are referenced within the text of the regulations. These changes will not affect the meaning, interpretation or implementation of the regulations as the meanings of the regulations are apparent from the text of the regulations.

The definition of the term “operator” was removed from section 3101. This term is not utilized within Senate Bill 618 (Statutes of 2011) which is the legislation enabling adoption of these regulations. This change will not affect the meaning, interpretation or implementation of the regulations because deletion of the definition is accompanied by deletion of the term from those places in the regulations where inclusion of the term had been proposed.

Accompanying the deletion of the definition of the term “operator” is deletion of the term from those regulations where the term had been proposed. This change will not affect the meaning, interpretation or implementation of the regulations because deletion of the term “operator” from the regulations will still leave the landowner responsible for compliance with the solar-use easement statutes and these regulations. Leaving responsibility for compliance with the landowner is consistent with, and will not change implementation of the express terms of the solar-use easement statutes, because those statutes only place the responsibility for compliance upon landowners and do not utilize the term “operator.”

The last sentence of the definition of the term “solar-use easement amendment” was deleted from the section which has been re-numbered to be 3101(a)(6). The deleted sentence had read: “An amendment does not include any addition to, or deletion of, land from the solar-use easement project site.” This change will not affect the meaning, interpretation or implementation of the regulations because the sentence had been proposed for the purpose of clarifying that “solar-use easement amendments” may only be used to makes changes regarding uses that were allowed in a previously approved solar-use easement, or changes to previously approved management or restoration plans. The language regarding changes in uses and changes in management and restoration plans will remain in the regulation. However, upon further review, it became apparent that proposed last sentence did not add clarity to the proposed regulation, but instead added ambiguity and made the regulation less clear

because the sentence was not related to the prior provisions in Section 3101(a)(6) and only stated that an amendment cannot be utilized to make a change to the area of the solar-use easement site without indicating how such a change may be made.